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January 30, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Via e-mail (regs.comments@federalreserve.gov)

RE: Docket Nos. R-1167, R-1168, R-11679, R-1170 and R-1171
Regulation Z (Truth in Lending) Regulation B (Equal Credit Opportunity), Regulation E (Electronic Funds Transfers), Regulation M (Consumer Leasing) and Regulation DD (Truth in Savings)

Dear Ms. Johnson:

On behalf of JPMorgan Chase Bank and its affiliates, including Chase Manhattan Bank USA, N.A., Chase Manhattan Mortgage Corporation, and Chase Manhattan Automotive Finance Corporation (collectively, "Chase"), we welcome the opportunity to provide comments in response to the recently proposed revisions to Regulations Z, B, E, M and DD and the Official Staff Commentary thereto. In this letter we are commenting solely, with respect to the proposed uniform definition and guidance concerning "clear and conspicuous" disclosure requirements.

The Federal Reserve Board (the "Board") seeks to amend these regulatory provisions by adding clearer and better-articulated definitions for the "clear and conspicuous" standards under which disclosures are provided to consumers. We commend, support and share the Federal Reserve Board's (the "Board") stated goals that consumers receive noticeable and understandable information. For the reasons below, however, we firmly believe that adoption of the proposed rules will have unintended consequences that will work to the detriment of both consumers and financial institutions. For consumers, the proposed

rules will not result in more noticeable and understandable disclosures, but rather will cause information that is provided to them to be longer, more complex and, thus, more difficult to understand.

Chase is eager to work with the Board towards creating balanced rules that protect consumers while minimizing burdens on financial institutions. It is in that spirit that we suggest that the proposed rules should not be adopted and, alternatively, we offer comments on ways in which the proposed rules could be improved if they are to be adopted.

After initially addressing our general and key concerns, this letter focuses comments on specific issues engendered by the proposed rules.

General Comments

The Board proposes to use a nearly identical "clear and conspicuous" definition to the one contained in Regulation P as the uniform standard for disclosures made under five consumer protection regulations. Regulation P requires privacy and opt out notices to be clear and conspicuous; that is, reasonably understandable and designed to call attention to the nature and significance of the information contained in the notices. The more expansive Regulation P definition of "clear and conspicuous" differs from similar requirements contained in other consumer protection regulations (*e.g.*, Regulation Z) that mandate clear and/or noticeable disclosures to consumers.

There is no need for the proposed rules because there is no evidence of a problem with the existing rules. The Board explains that the new rules are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with consumer financial products and services. The Board, however, cites no evidence that consumers have difficulty understanding information they receive in connection with consumer financial products and services that would be affected by the proposed rules. Moreover, irrespective of whether the Board proceeds with this rulemaking, it is obviously in our self interest to remedy any deficiencies in disclosure forms we provide to consumers in order to minimize customer dissatisfaction and complaints.

Adopting the proposed changes is itself likely to create a problem for consumers. Ironically, the proposed rules would adopt the definition from Regulation P that governs privacy and opt out notices, which are the very disclosures most widely criticized for being complex and difficult for consumers to understand. Indeed, there is another regulatory proposal outstanding at this time in which the Board and some other agencies are soliciting input on how to make privacy and opt out notices more simple and understandable to consumers. Incorporating the Regulation P "clear and conspicuous" definition into other consumer protection regulations runs the risk that disclosures under those other regulations will similarly become more complex and difficult for consumers

to understand than under the standards that currently exist. Therefore, the Regulation P standard should not be incorporated into these other regulations.

The proposal, if adopted, will make compliance more difficult and expensive for financial institutions. The Board claims that consistency among the regulations should facilitate compliance by institutions, but the opposite is true. Financial institutions are already in compliance with the consumer protection regulations at issue. The proposed definition creates new uncertainty for compliance with these regulations. Adoption of a new "clear and conspicuous" standard, including guidance on type size, will require financial institutions to reexamine whether their disclosure forms with any new requirements and will likely lead them to make changes to many of the forms they now use to comply with the regulations. Since there is no evidence of a problem with current disclosure forms, the burdens and costs of these efforts and of printing and distributing new forms would outweigh any potential benefit. Thus, we again urge that the Regulation P standard should not be incorporated into these other regulations and, in any event, the Board should provide another opportunity for public comment before finalizing any new rules. Furthermore, if any new standard is adopted, the Board ought to recognize the need for lead-time of at least two years to implement new disclosures.

The Board should not adopt an imprecise standard. The Board explains that the rationale for the new rules is to establish a more uniform and more specifically defined standard for providing disclosures. This is often a laudable objective, but not where the standard is faulty and where the standard will be applied in circumstances that are not comparable.

The definition in Regulation P, as well as the virtually identical definitions and interpretations thereof that would be included in the proposed rules, contains terms that are somewhat subjective or ambiguous (*e.g.*, wide margins and ample line spacing). These terms are susceptible to various interpretations and disclosures may be found to conform in some respects, but not in others. Indeed, in connection with the Regulation P rulemaking the Agencies recognized that many of the examples it used in the "clear and conspicuous" standard were imprecise.

Adopting the proposed definition will lead to frivolous lawsuits, including class actions. This problem with Regulation P's imprecise definition is exacerbated by extending the Regulation P definition to other consumer protection regulations. Under Regulation P, there is no private right of action. Consequently, any failure by a financial institution to provide disclosures that meet the "clear and conspicuous" standard of Regulation P would rest on the judgment of regulators, who are more closely attuned to the challenges involved in producing disclosures that conform to the myriad requirements that are applicable. Thus, under Regulation P, agencies would evaluate whether a financial institution is actually complying and, if not, take appropriate action.

If the proposed "clear and conspicuous" standard is adopted for the other rules, however, institutions will be subject to private rights of action. Financial institutions will be subject to damage awards if the "clear and conspicuous" standard, as applied by courts, is

found not to have been met, which may occur if the finder-of-fact concludes the disclosure fails to meet a single element set forth in the definition or an interpretation thereof. Indeed, in connection with the Regulation P rulemaking, the agencies recognized that the examples of how to make a disclosure "clear and conspicuous" were not mandatory and stated that financial institutions may use techniques not listed in the examples. Unfortunately, there is no comparable statement in connection with the proposed extension of the "clear and conspicuous" standard to other rules.

The Board should not adopt rules that create open-ended exposure for institutions to private rights of action, including class actions, for frivolous or technical claims. Therefore, the "clear and conspicuous" standard of regulation P should not be extended to the other rules as proposed.

Specific Comments

1. *Type Size* - The Board proposes a type-size requirement, but no such requirement appears in Regulation P. This aspect of the proposal should be deleted if the Board goes forward with the proposal. Type size requirements may be difficult to comply with for a variety of disclosures; for example, it will be difficult to reconcile the proposed standards with state law requirements or other type size requirements, such as those under regulation Z. Furthermore, such type size requirements are inconsistent with the proposed advertising standard for Regulation M, which provides that the "clear and conspicuous" standard is not met if the disclosures are not readable. Thus, the proposal contains inconsistent requirements and creates confusion concerning how to comply with current disclosure requirements.
2. *Integrated Disclosures* - The Board proposes that the presence of contractual terms, state disclosures and the like, though not prohibited, may be a factor that causes federal disclosures to fail to meet the "clear and conspicuous" standard. Such a result would invalidate, on a wholesale basis, integrated disclosures, such as credit card agreements, retail installment contracts and consumer leases, which are widely used by financial institutions. If the Board goes forward with the proposal, this aspect of the proposal should be revised to state that the presence of these items should in no way be considered a factor that causes federal disclosures to fail to meet the "clear and conspicuous" standard.
3. *Model Language* - If the Board goes forward with the proposal, the Board ought to include a statement that any model form or language contained in the regulations shall be deemed to meet the "clear and conspicuous" standard.
4. *Codes and Symbols* - We commend the Board for clarifying that the use of codes and symbols, such as “APR,” is not prohibited by the "clear and conspicuous" standard in Regulation Z where a legend appears. If the Board goes forward with the proposal, the Board should take that a step further and state that the use of such codes and symbols should in no way be considered a factor that causes federal disclosures to fail to meet the "clear and conspicuous" standard. Similarly, a comparable statement should be made in connection with the other regulations if the proposal is adopted.
5. “*Whenever Possible”* - Many of the examples in the proposed rule of how to make a disclosure reasonably understandable use the term the “whenever possible,” such as

"use short explanatory sentences or bullet lists whenever possible." The words "whenever possible" make these examples seem like absolute requirements and invite second-guessing of whether any aspect of the disclosure might have been restructured in some way to meet the particular example. Deleting the "whenever possible" terminology would more consistent with these items being true examples rather than requirements.

6. *Legal or Business Language* - The fifth example of how to make a disclosure reasonably understandable should be deleted because legal or business language is sometimes appropriate for the disclosures subject to the regulations. Alternatively, if this example is to be kept, it should be revised to read, "avoid inappropriate legal and highly technical business terminology." (Emphasis added). The word "inappropriate" is needed because many words and phrases can be considered "legal terminology" that may be necessary and/or appropriate.
7. *Margins and Line Spacing* - The third example of how to call attention to a disclosure should read, "provide adequate margins and line spacing." (Emphasis added). The words "wide" and "ample" are too susceptible to varied interpretations and are an inexact attempt to quantify what is required. "Adequate" is a qualitative term, which would be less likely to result in a challenge to the notice.

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We thank you very much for the opportunity to present these comments. Please do not hesitate to contact my colleague, Alan M. Weinberg (212-552-6153) or me, if you have any questions about any of the matters discussed in this letter or would like any further information. Thank you again for your consideration.

Sincerely,

Jay N. Soloway